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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,214	04/07/2004	Richard Lunak	DB000975-004	7353

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THORP REED & ARMSTRONG, LLP  
ONE OXFORD CENTRE  
301 GRANT STREET, 14TH FLOOR  
PITTSBURGH, PA 15219-1425

EXAMINER


CRAWFORD, GENE O

ART UNIT PAPER NUMBER

3651

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 <b>Office Action Summary</b>	Application No. 10/820,214	Applicant(s) LUNAK ET AL.	
	Examiner Gene O. Crawford	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/7/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of "evaluating a queue of requests of items to be picked" in claim 1 is unclear in that nowhere else in the claim does it speak of or recite a picking step. Hence it is unclear as to why the recitation of "items to be picked" in particular is included in the claim language. Hence, any reference to items being picked in the claims has not been given any patentable weight.

3. Claim 6 recites the limitation "more than one patient" in line 2. There is insufficient antecedent basis for this limitation in the claim.
4. Claim 7 recites the limitation "more than one dispensing device" in line 2. There is insufficient antecedent basis for this limitation in the claim.
5. Claim 8 recites the limitation "more than one decentralized location" in line 2. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 26 recites the limitation "the date and time" in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 3, 5, 10, 11 13-15, 19, 29 and 30 as best understood are rejected under 35 U.S.C. 102(e) as being anticipated by Fellows et al.

The method disclosed by Fellows et al. includes all the claimed features and in particular includes: evaluating a queue of requests of items to be used in filling a package (column 8, lines 64 thru column 9, line 7); operating a carousel based on the evaluating (column 8, lines 64 thru column 9, line 7); filling a restocking package 14 with items held in the carousel 20 in response to the operating when an item is in the carousel; the evaluating being performed dynamically based on user provided priorities (column 9, lines 10-12); performing dose calculations based on doses not being present in the carousel (column 9, lines 54-57); and generating a request whenever the quantity of the item falls below a par value (column 9, lines 59-65).

9. Claims 31-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Holmes et al.

The method disclosed by Holmes et al. includes all the claimed features and in particular includes: filling an envelop with items in a centralized storage location,

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delivering the envelop to a dispensing device at a decentralized location, and inserting the envelop into a lock-lidded, patient specific location in the dispensing device (column 13, lines 24-39 and column 14, lines 6-52); a tote 34 containing the envelops and inserting includes placing the tote in the dispensing device; the tote containing a chip having information regarding the contents (column 12, lines 31-33); and the centralized location including an automation device for capturing information from the chip.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fellows et al. in view of McGrady ('234).

With regard to claim 23, Fellows et al. includes all the claimed features but does not disclose a controlled substance vault. McGrady however discloses the broad teaching of providing a controlled substance vault or drawer for allowing a request to be sent to open the drawer for access. It would have been obvious to one of ordinary skill in the art to provide the method of Fellows et al. include sending a request to a controlled substance vault to facilitate restricted access and increased security for controlled substances.

***Allowable Subject Matter***

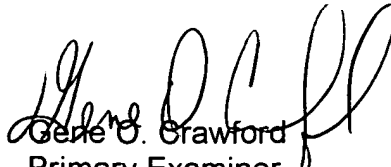
12. Claims 2, 4, 12, 16-18, 24 and 25 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene O. Crawford whose telephone number is 703/305-9733. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on 703/308-1113. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gene O. Crawford  
Primary Examiner  
Art Unit 3651

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